No. 96-1926

Supreme Court, U.S.
FILED
JUL 3 1997
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In The

# Supreme Court of the United States

October Term, 1996

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

*Petitioners,*

*vs.*

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY, SHERIFF'S DEPARTMENT OF LUZERNE COUNTY,

*Respondents.*

*On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, Middle District*

## BRIEF IN OPPOSITION FOR RESPONDENT FRANKLIN FIRST FEDERAL SAVINGS BANK, n/k/a FRANKLIN FIRST SAVINGS BANK

DONALD H. BROBST
*Counsel of Record*
THOMAS B. CARPENTER
ROSENN, JENKINS
& GREENWALD, L.L.P.
*Attorneys for Respondent Franklin First Federal Savings Bank, n/k/a Franklin First Savings Bank*
15 South Franklin Street
Wilkes-Barre, Pennsylvania 18711
(717) 826-5600

71394 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, inc.

## RULE 29.6 DISCLOSURE

Franklin First Savings Bank, f/k/a Franklin First Federal Savings Bank is a wholly owned subsidiary of OnbanCorp., Inc.

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Appendix A — Opinion and Order of the Court of Common Pleas of Luzerne County, Commonwealth of Pennsylvania Entered May 5, 1995 ..... 1a

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Franklin First Federal Savings Bank, n/k/a Franklin First Savings Bank ("Franklin" or "Respondent"), by and through its counsel, Rosenn, Jenkins & Greenwald, L.L.P., submits this Brief in Opposition to the Petition of Geraldine Williams and Woodrow Williams, Jr. ("Williams" or "Petitioners"), for a Writ of Certiorari to the Supreme Court of Pennsylvania, Middle District seeking review of the judgment of that court entered on January 21, 1997.

## COUNTERSTATEMENT OF CASE

Franklin commenced a mortgage foreclosure proceeding against the Petitioners on August 20, 1986, seeking to foreclose upon certain real estate owned by the Petitioners situated in Luzerne County, Pennsylvania. *In re Williams*, 100 B.R. 726 (Bankr. M.D. Pa. 1989). The property is commonly known as R.D. #1, Meadow Run Road, Oakhill Park, Bear Creek Township, Luzerne County, Pennsylvania ("Real Property"). The mortgage foreclosure action was filed because the Petitioners had ceased making mortgage payments to Franklin beginning with the payment due on April 22, 1986 (Resp. App. 4a-5a).

The Petitioners did not defend or otherwise contest the foreclosure proceeding and a judgment was entered against the Petitioners on October 24, 1986 to Term No. 3807-C of 1986 with the Court of Common Pleas of Luzerne County, Commonwealth of Pennsylvania ("Court of Common Pleas"). *Williams*, 100 B.R. at 726. No appeal was taken from the entry of this judgment, nor was a Petition to Open and/or Strike ever filed by the Petitioners.

The Real Property was listed for a foreclosure sale to be held on February 6, 1987. *Williams*, 100 B.R. at 726-27. On January 12, 1987, prior to the scheduled foreclosure sale, the Petitioner - Husband, Woodrow Williams, Jr., filed a Chapter

13 bankruptcy petition with the United States Bankruptcy Court for the District of Maryland [Rockville] to Case No. 874-0093. *Williams*, 100 B.R. at 726. Notice of this bankruptcy filing was not properly provided by the Petitioners or received by either Franklin or the Sheriff's Office of Luzerne County ("Sheriff"). *Williams*, 100 B.R. at 728. On February 6, 1987, Franklin was the successful bidder at the foreclosure sale with a bid of taxes and costs. The Sheriff subsequently delivered a deed to Franklin conveying title to the Real Property on February 17, 1987. *See* Petition, Exhibit D.

On May 13, 1987, the Petitioners, through legal counsel, filed a Petition to Set Aside Sale to Term No. 3807-C of 1986, with the Court of Common Pleas (Resp. App. 5a). The Petition to Set Aside Sale alleged that the foreclosure sale of the Real Property was in violation of the automatic stay provisions set forth in the Bankruptcy Code at 11 U.S.C. § 362. Upon Franklin's filing of a Notice to Remove Case, the Petition to Set Aside Sale was removed to the United States Bankruptcy Court for the Middle District of Pennsylvania ("Bankruptcy Court") by order of the Honorable Thomas C. Gibbons, dated November 9, 1987, docketed at Case No. 5-87-0126. *Williams*, 100 B.R. at 727.

The issue of whether or not there was a violation of the automatic stay and any resulting damages was fully litigated before the Bankruptcy Court. The applicable portion of automatic stay provision from the Bankruptcy Code is as follows:

> (h) An individual injured by any willful violation of a stay provided by this section shall recover damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362(h).

The Bankruptcy Court issued an Order and Opinion on June 13, 1989 which stated ". . . that [Petitioners] have not met their burden of proving that Franklin took intentional or deliberate actions amounting to a 'willful' violation of the stay." *Williams*, 100 B.R. at 729. The Bankruptcy Court further stated ". . . we deny the [Petitioners'] request for damages against Franklin and the Sheriff's Office of Luzerne County because of the [Petitioners'] failure to show an intentional and willful violation of the automatic stay imposed by § 362 of the Bankruptcy Code." *Id.* Although the Bankruptcy Court found that Franklin was not liable for damages due to the lack of misconduct, the Bankruptcy Court ruled that since the foreclosure sale was subsequent in time to the filing of the bankruptcy petition, the sale must be "set aside." *Williams*, 100 B.R. at 728.

The Petitioners were dissatisfied with the decision of the Bankruptcy Court and filed an appeal to the United States District Court for the Middle District of Pennsylvania ("District Court") "regarding damages for [Petitioners] having been locked out of their premises for a period of more than two (2) years and damages for an unjustified foreclosure proceeding." The Bankruptcy Court granted an extension of time to allow Petitioners to perfect their appeal with the District Court (Resp. App. 7a). District Court Judge Edwin M. Kosik was assigned the Petitioner's appeal and the appeal was subsequently dismissed on September 6, 1989 (Resp. App. 7a). Within Judge Kosik's Memorandum Opinion he indicated that the appeal was "only from that part of bankruptcy judge's opinion which denied [Petitioners'] request for damages against [Franklin] and [the Sheriff's Office] because of their failure to show an intentional and willful violation of stay" (Resp. App. 7a-8a). Subsequent to Judge Kosik's decision, the Petitioners filed a Motion for Reconsideration and Reinstatement of the appeal. The Motion for Reconsideration was granted by Judge Kosik, but, on November 27, 1989, he once again denied Petitioners' appeal

(Resp. App. 8a). No further action was taken by the Petitioners to dispute the Bankruptcy Court ruling (Resp. App. 8a).

On June 13, 1990, less than seven months after the dismissal of the District Court appeal by Judge Kosik, the Petitioners initiated a separate proceeding by filing a Complaint for Damages ("Complaint") against Franklin with the Court of Common Pleas (Resp. App. 8a). An identical complaint was filed against the Sheriff of Luzerne County which was eventually consolidated by the trial court with this action. The Complaint was served upon Franklin on January 23, 1991, and sought to recover One Million Dollars ($1,000,000) in damages against Franklin and Sheriff for an alleged "willful and intentional violation of the automatic stay imposed by the Bankruptcy Code."

Franklin timely filed an Answer and New Matter to the Petitioners' Complaint asserting the doctrines of *res judicata* and collateral estoppel. Franklin asserted that the Petitioners were attempting to relitigate the issue of damages for an alleged "willful violation" of the bankruptcy stay previously litigated by the Petitioners through counsel in the Bankruptcy Court, which had resulted in a judgment on those issues in favor of Franklin by the Bankruptcy Court. In addition, Franklin's Answer refuted the Petitioners' contention that Franklin disobeyed the Bankruptcy Court's Order of June 13, 1989, by failing to reconvey the property to Petitioners. To the contrary, the property was reconveyed to Petitioners by deed on July 11, 1989 (recorded on July 14, 1989) found in Luzerne County Deed Book 2316, page 675, *et seq*. The Petitioners' allegations that they were denied access to the property are also incorrect. Franklin asserts that throughout the bankruptcy proceedings the Petitioners had access to the Real Property, and at no time did the Petitioners seek the access to the Real Property which they claim was denied to them.

On January 23, 1995, Franklin filed a Motion for Summary Judgment in that the claims raised by the Petitioners in the instant state action were previously decided by a court of competent jurisdiction (*res judicata*), as were the issues (collateral estoppel) and that Petitioners were barred from relitigating these claims and issues. The trial court held that no genuine issue of material fact existed, a finding not disputed by the Petitioners prior to the trial court's decision, and ruled that the Petitioners' claims were barred by the doctrines of *res judicata* and collateral estoppel (Resp. App. 8a-12a). The trial court accordingly entered judgment in Franklin's favor (Resp. App. 14a-15a).

The Petitioners appealed the decision of the Court of Common Pleas to the Superior Court of Pennsylvania ("Superior Court"). Briefs were prepared by both sides and oral arguments were held before the Superior Court on November 28, 1995. All parties were given ample time to argue their respective positions at that time. Upon consideration of the Petitioners' arguments and the extensive pleadings filed by both sides, the Superior Court entered a judgment on April 1, 1996, affirming the decision of the Court of Common Pleas (Resp. App. 18a). In its decision the Superior Court held that the "[Petitioners] had litigated the same matter before the United States Bankruptcy Court for the Middle District of Pennsylvania" and affirmed the trial court's entry of summary judgment on the basis of collateral estoppel and *res judicata* (Resp. App. 17a). The Petitioners filed an Application for Reargument/Reconsideration ("Application") with the Superior Court on April 10, 1996. The Petitioners' Application was denied on June 4, 1996.

The Petitioners further pursued this matter by filing a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania on June 28, 1996. Franklin filed a Brief in Opposition to Petition for Allowance of Appeal, and on January 17, 1997, the Pennsylvania Supreme Court entered an Order,

*per curiam*, denying the Petitioners' Petition for Allowance of Appeal (Resp. App. 19a).

The Petitioners then filed a Petition for Writ of Certiorari with the United States Supreme Court on June 4, 1997. This Brief is filed with this Court in opposition thereto.

## REASONS FOR DENYING THE WRIT OF CERTIORARI

### I.

### THE PETITION IS REPLETE WITH MISSTATEMENTS AND OMISSIONS OF FACT AND LAW.

Rule 15.2 of the Rules of the Supreme Court states ". . . the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted." Sup. Ct. R. 15.2. The Petition at issue contains numerous misstatements of fact and/or law.

The Petitioners repeatedly state that Franklin and/or its attorneys received notice of the Petitioners' initial bankruptcy filing. This is incorrect. The Bankruptcy Court found that the Petitioners did not meet their burden to establish that Franklin had actual notice of the bankruptcy filing. Specifically, the Bankruptcy Court stated that the Suggestion of Bankruptcy filed in the Prothonotary's Office of Luzerne County on February 3, 1987, was inadequate notice of the bankruptcy filing because the proper place to make the filing is in the Recorder of Deeds office. *Williams*, 100 B.R. at 728.

The Petitioners also state that they were denied access to the Real Property for over two years while Franklin was record owner of the property. This is also incorrect as the Petitioners

never requested access to the Real Property. Furthermore, the lock to the back door of the property was not changed; therefore, Petitioners had the ability to access the building.

The Petitioners further insist that Franklin did not abide by the Bankruptcy Court Order, dated June 13, 1989, setting aside the foreclosure sale as it allegedly did not transfer the Real Property back to the Petitioners until October 1989. In fact, the Deed returning the Real Property to Petitioners indicates that the Deed was executed on July 11, 1989, and recorded on July 14, 1989.

The Petitioners insist that the entry of summary judgment by the Court of Common Pleas was improper as there are genuine issues of material fact. The Court of Common Pleas granted summary judgment in favor of Franklin after providing the Petitioners the opportunity to respond (Resp. App. 14a). The Petitioners did not contest the assertion that there was no genuine issues of material fact. The Superior Court agreed with the findings by the Court of Common Pleas on summary judgment, including its finding that there were no genuine issues of material fact, and affirmed its decision (Resp. App. 18a).

The Petitioners further argue that the decision of the Bankruptcy Court does not bar their subsequent Complaint for damages. The Complaint filed by the Petitioners sought damages for "*willfully and intentionally* violating an automatic stay imposed by § 362 of the Bankruptcy Code . . ." (emphasis added). In response to Franklin's Summary Judgment Motion and over four (4) years after the Complaint was originally filed, the Petitioners changed their position and attempted to amend their Complaint to add "allegations of negligence or unintentional tortious violation of the provision of the automatic stay" (Resp. App. 12a). The Court of Common Pleas in its summary judgment opinion disagreed with the Petitioners and stated:

> . . . there is not the slightest hint of "unintentional" or "negligent" conduct on the part of [Franklin] in the [Petitioners'] Complaint. Nor has there been any such indication throughout the parties protracted litigation. Indeed, if [Petitioners] were now allowed to amend their Complaint to include such allegations, they would effectively be allowed to directly contradict both their allegations to date and their deposition testimony. Moreover, discovery in this instant matter having been completed and the matter having already been listed for trial and then removed from the trial list to enable the instant Motion for Summary Judgment to be decided we must conclude that allowing such an eleventh hour amendment would clearly prejudice [Franklin]. *Marcinko v. Strouse, et al.*, 94 Luzerne L.R. 63 (1994) and *Phillips, et al. v. Geisinger Wyoming Valley Center, et al.*, 85 Luzerne L.R. 83 (1995).

(Resp. App. 12a-13a).

Clearly, the Petitioners' allegation of an unintentional or negligent violation has been sufficiently addressed by the trial court, and subsequently reviewed and rejected as meritless by the Superior Court. The Pennsylvania Supreme Court denied the Petitioners' Petition for Allowance of Appeal (Resp. App. 19a).

An argument was also made by the Petitioners that summary judgment was improper as the Bankruptcy Court lacked jurisdiction to award damages for an unintentional or negligent violation of the stay. This is not true. If the Bankruptcy Court

had found the need to award damages for any type of stay violation, it had proper jurisdiction under 28 U.S.C. §§ 157(b)(2)(E), (G) and/or (O) and 1334. Despite having proper jurisdiction, the Bankruptcy Court specifically reviewed the actions of Franklin and awarded no damages to the Petitioners.

The Petitioners also reference Pa. R. Civ. P. 3133, 3135 and 3136 with the purpose of somehow showing that Franklin, as the recipient of a sheriff's deed, is liable for the "paying of taxes, maintaining the property and clearing of all liens of record against the sold property." Petition, p. 18. The Petitioners make this claim without any further reference to the content of these rules. In fact, Pa. R. Civ. P. 3133 ("Lien Creditor as Purchaser"), 3135 ("Sheriff's Deed to Real Property"), and 3136 ("Distribution of Proceeds") generally deal with the lien creditors' ability to receive a credit for the amount of its debt at a sheriff's sale, and the obligation of the sheriff to prepare a deed and schedule of distribution in a timely manner. These rules do not support the Petitioners' asserted obligation to pay taxes and satisfy liens which may have arisen after the foreclosure sale.

The Petitioners allege that they were denied a hearing in the Court of Common Pleas. This bald allegation is made without any explanation or support. In fact, the Petitioners have had a more than ample opportunity to litigate this matter in "open court." The Court of Common Pleas, after providing a full opportunity for all parties to present their positions, found that the Petitioners already fully litigated the allegations in their Complaint during the earlier proceedings held in Bankruptcy Court (Resp. App. 8a-12a). The Court of Common Pleas did not deny the Petitioners a hearing, but found that the claims presented in their Complaint were previously adjudicated and therefore, relitigation of the claims and issues was barred by the doctrines of *res judicata* and collateral estoppel.

The Petitioners also alleged that "Franklin has continued to harass Petitioners by continuing to send statements of monies due and interest charged." Petition, p. 27. There has been no harassment by Franklin. Franklin is not sending statements to the Petitioners. In fact, the Petitioners remain liable for this debt as neither of their bankruptcy proceedings resulted in a discharge order.[1]

Finally, the Petitioners have presented a listing of alleged damages. These calculations are without support or explanation. The Petitioners have never provided Franklin or the Court with any supporting documentation.

Petitioners' misstatement of law which are directly related to their arguments as to why this Court should exercise its discretionary jurisdiction over this case are discussed *infra*.

## II.

## THE PETITIONERS FAIL TO DEMONSTRATE ANY SPECIAL AND IMPORTANT REASON WHICH SUPPORTS THEIR REQUEST THAT THIS COURT EXERCISE ITS DISCRETIONARY JURISDICTION OVER THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA.

The granting of a writ of certiorari is discretionary. Sup. Ct. R. 10. There is not a right to the granting of a writ of certiorari. *Id.* Rule 10 of the Rules of the Supreme Court indicates that a petition for a writ of certiorari will only be granted for compelling reasons. The rule further states the Court considers appeals from a judgment of a state court when:

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1. In addition to the Chapter 13 case filed by Woodrow Williams, Jr., Geraldine Williams filed a separate Chapter 11 proceeding (No. 87-4-0966) in the United States Bankruptcy Court of the District of Maryland on April 20, 1987.

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10(b) and (c). Furthermore, the jurisdiction of the Supreme Court is set out by federal statute;

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a). The jurisdictional constraints included in Section 1257(a) are to be strictly construed. *Palmore v. United States*, 411 U.S. 389, 396 (1973).

The Petitioners have failed to meet the jurisdictional requirements set forth in 28 U.S.C. § 1257(a) and have failed to satisfy any of the considerations for granting a writ of certiorari included in Rule 10. The Petitioners bear the burden to establish the Court's jurisdiction. *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, 70-71 (1948). Any question as to the existence of jurisdiction are to be construed against the Petitioners. *Id.* at 71.

**A. Petitioners Have Failed To Present A Question Of Federal Law.**

The basis for Supreme Court jurisdiction is the existence of a "federal question." *St. Louis, I.M. & S. Ry. Co. v. Taylor*, 210 U.S. 281 (1908). Review by the Supreme Court is not intended to resolve any error in a state court proceeding, but merely to address the treatment of federal rights. *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 97 (1909). A federal question must be both real and substantial. *See Palmer Oil Corp. v. Amerada Petroleum Corp.*, 343 U.S. 390, 391-92 (1952); *Equitable Life Assurance Soc'y of United States v. Brown*, 187 U.S. 308, 311 (1902).

If a real and substantial federal question is presented to Supreme Court for review, it must first be established that this particular federal question was presented to the State Court and specifically addressed in rendering its decision. *Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987). The record presented by the Petitioners must establish that the federal question was addressed by the state courts. *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 77-78 (1988). Mere references to briefs or statements which are not part of the record transmitted to the Supreme Court are inadequate. *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 51 (1934).

If a federal question is presented to the Supreme Court, it will not be heard if the state court judgment to be reviewed rests on a state law principle that is *independent* from the proposed federal question and is alone an *adequate* basis for the state court's decision. *Bell v. Maryland*, 378 U.S. 226, 237 (1964); *Smith v. Smith*, 366 U.S. 210 (1961); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 129 (1945).

This is consistent with the premise that the Supreme Court may only review state court judgments that conflict with federal rights. *Zacchini v. Scripps - Howard Broad. Co.*, 433 U.S. 562, 566 (1977). A state law question is independent if it alone is dispositive of the case without the need to address a federal question, if any. *Jankovich v. Indiana Toll Road Comm'n*, 379 U.S. 487, 491-92 (1965). A state law question is adequate if it is of "sufficient breadth to support the judgment," *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931), and is a well settled state ground supported by the courts of the particular state. *Howlett v. Rose*, 496 U.S. 356, 366 n.14 (1990).

Neither the Supreme Court nor the lower federal courts have any authority to place a construction on a *state* statute or to interpret *state* law different than the interpretation rendered by the highest court of the state. *See, e.g., New York v. Ferber*, 458 U.S. 747, 767 (1982); *Exxon Corp. v. Department of Revenue of Wisconsin*, 447 U.S. 207, 226, n.9 (1980). This proposition, fundamental to our system of federalism, is applicable to procedural as well as substantive law. *Johnson v. Fankell*, 65 U.S.L.W. 4438, 4440 (June 9, 1997); *see Wardins v. Oregon*, 412 U.S. 470, 477 (1973). Thus, the decision of the Pennsylvania Courts on the exclusively state law questions involved in the case at bar cannot provide a basis for this Court's exercise of its discretionary jurisdiction to review federal law questions.

The Questions Presented for Review by the Petitioners are

precluded from the jurisdiction of the Supreme Court because they fail to present a real and substantial federal question as required under 28 U.S.C. § 1257(a) and Supreme Court Rule 10. To the extent the Petitioners have attempted to create a federal question, they have been unsuccessful as the state court judgment is based solely on state law. As demonstrated *infra* by the analysis of each of the Questions Presented For Review by Petitioners, there is no federal law question for this court to review. In the absence of any federal question, let along an important federal question, there is no basis for the exercise of this court's jurisdiction with respect to this matter.

> 1. Is Franklin responsible under the law for extensive damage that had occurred to the property while Franklin was in possession of the property in question by virtue of a Deed of Trust issued by the Sheriff to Franklin?

The Supreme Court cannot rule on this issue as it does not invoke any real and substantial federal question. Rather; the issue is solely one pertaining to state real property law.

> 2. Is Franklin responsible for real estate taxes due and payable while Franklin had the property in their possession for three years by virtue of a Deed of Trust issued by the Sheriff's Department to Franklin?

Again, the Supreme Court does not have jurisdiction to review this question as it exclusively involves issues of state real estate and property tax law. The Petitioners have not raised a real and substantial federal question.

> 3. Is the Sheriff's Department responsible

for allowing a wrongful foreclosure after the Sheriff's Department received Notice of Bankruptcy?

While this question is not directed at Franklin, but a co-defendant, Luzerne County Sheriff, it should be noted that there were no findings in the record that the Sheriff received any notice of bankruptcy by the Petitioners. The issue of notice under the Bankruptcy Code was specifically addressed in a separate bankruptcy proceeding. *See Williams*, 100 B.R. at 728. Because this issue and other issues presented by the Petitioners were already litigated among the same parties in a prior proceeding, the Court of Common Pleas held that the Petitioners' current action is barred by the doctrines of collateral estoppel and *res judicata* (Resp. App. 14a-15a). This decision was upheld by the Superior Court (Resp. App. 18a); the Pennsylvania Supreme Court denied Petitioners' request to review the Superior Court decision (Resp. App. 19a). There is no real and substantial federal question presented by the Petitioners as the issue was decided solely on the independent and adequate state law basis of collateral estoppel and *res judicata*. A state court judgment of estoppel barring a party from rehearing an action is an independent and adequate state ground which precludes Supreme Court jurisdiction. *See Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 163-66 (1917); *Leonard v. Vicksburg Shreveport Pac. R.R. Co.*, 198 U.S. 416, 422-23 (1905); and *Hale v. Lewis*, 181 U.S. 473, 479 (1901).

4. Whether the lower courts improperly applied the Standards of Law regarding the automatic stay under the applicable Bankruptcy Code, 11 U.S.C. 362, afforded to the petitioner in a bankruptcy proceeding. The lower court completely ignored the issues of Franklin and the Sheriffs'

> Department having been served notice of a bankruptcy proceeding and after notice of bankruptcy having gone forward with a foreclosure without a Lift Stay Hearing. A Federal Judge by Order of the Court, ordered real property returned to the Petitioners declaring that the foreclosure sale of said property by Franklin and the Sheriff's Department was invalid and shall be set aside with all expenses to be born by Franklin.
>
> 11 U.S.C. 362 states that an individual injured by a violation of the automatic stay shall recover actual damages, including costs and in appropriate circumstances, may recover punitive damages.

The Petitioner again has presented an inappropriate issue for review by the Supreme Court. Factually, the Petitioners are inaccurate by insisting that Franklin and the Sheriff's Department conducted a Sheriff's sale of the Real Property after receiving notice of bankruptcy. There is no finding of actual receipt of a bankruptcy notice by either Franklin or the Sheriff.

The legal issues presented by the Petitioners involve the application of 11 U.S.C. § 362 which was thoroughly addressed in separate proceedings by the Bankruptcy Court. *Williams*, 100 B.R. at 728-29. The appeal of this decision was dismissed by the District Court. Petitioners never further appealed the decision of the District Court. Instead, they chose to start this new action in state court and presented this same issue to the Court of Common Pleas which ruled that the Petitioners were estopped from retrying these issues based on the independent and adequate state law principles of collateral estoppel and *res judicata*. *See Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S.

at 163-66; *Leonard v. Vicksburg Shreveport & Pac. R.R. Co.*, 198 U.S. at 422-23; *Hale v. Lewis*, 181 U.S. at 479. This ruling of the Court of Common Pleas has been affirmed by the Superior Court (Resp. App. 18a), and the Petitioners' request for allowance of appeal (allocatur) was denied by the Pennsylvania Supreme Court (Resp. App. 19a). It is inappropriate for the Supreme Court to review these state law determinations.

> 5. Whether the lower court misinterpreted Pennsylvania Rules 3133, 3135 and 3136, which state that by accepting a valid Sheriff's Deed, Franklin had the sole responsibility of paying the taxes, maintaining the property and clearing all liens of record against said property. Franklin had the property in their possession for three years before Judge Gibbons, in Federal Bankruptcy Court, returned the property to the Petitioners. For this period of three years, real estate taxes fell into arrears and the property was permitted to suffer waste and deterioration.

The Petitioners have misrepresented the purpose of Pa. R. Civ. P. 3313, 3315 and 3136. Rule 3133 allows a lien creditor to receive a credit for the amount of the indebtedness due to them against the purchase price if the lien creditor is the successful bidder at the Sheriff's sale. Rule 3135 requires the Sheriff to deliver a deed to the successful purchaser, if there are no objections, within ten (10) days after the filing of the schedule of distribution. Rule 3136 requires the Sheriff to prepare a schedule of distribution within thirty (30) days of the Sheriff's sale of Real Property. None of these rules have anything to do with the alleged obligation of a purchaser to the former owner to maintain taxes and to clear all liens created subsequent to the Sheriff's sale.

Moreover, the Supreme Court has no jurisdiction over these state law issues which pertain to the proper interpretation of *state* court rules of civil procedure. *Johnson v. Fankell*, 65 U.S.L.W. 4438, 4440 (June 6, 1997).

> 6. Whether the lower court misinterpreted and skated the issues that there never was a trial afforded the Petitioners, that the Petitioners were denied a hearing in open court in the Court of Common Pleas of Pennsylvania, Luzerne County, and that the Respondents misrepresented to the Panel of the Superior Court in Philadelphia the value of the property.

Initially, it is disputed that Franklin misrepresented the value of the Real Property to the Superior Court. Furthermore, the issue of value is totally irrelevant to the current case. The Petitioners additional suggestion that they were somehow improperly denied a hearing is also false. The parties to the case each had a full opportunity to express their respective positions to the Court of Common Pleas. In fact, the case sat in the Court of Common Pleas for over four (4) years before a Motion for Summary Judgment was filed by Franklin.

The Petitioners are merely dissatisfied with the trial courts' ruling on Franklin's Motion for Summary Judgment which barred a relitigation of their claim under state law principles of collateral estoppel and *res judicata*. As previously discussed, this is an independent and adequate state law basis for the resolution of this matter which fails to raise any federal question.

> 7. Whether the lower court improperly applied the Standards articulated in *Federoff v. Harrison Constr. Co.*, 163 Pa. Super. 53,

> 60 A.2d 334 (1948), where it was held that negligence can be justifiably inferred and warranted where proof of an intentional act is insufficient and the harm is the same whether the breach of duty to the Petitioners by Respondents was intentional or unintentional; and in *Beardell v. Western Wayne Sch. Dist.*, 91 Pa. Commw. 348, 496 A.2d 1373 (1985), where it was held that the trial court abused its discretion in not allowing the pleadings to be amended to allow full development of a party's theories and averments.

The Petitioners mistakenly cite inapplicable case law from state courts in the Commonwealth of Pennsylvania. The Superior Court in *Federoff v. Harrison Constr. Co.*, 163 Pa. Super. 53, 60 A.2d 334 (1948) merely holds that there was sufficient evidence at trial to support the court's finding of negligence by the defendant relating to concussion damage resulting from blasting activities. The Petitioners incorrectly suggest that this case somehow subjects Franklin to claims of negligence. The reliance on this case by the Petitioners is misplaced. The *Federoff* case involves a matter where the plaintiff alleged in its complaint that the defendant was negligent in its blasting activities and the plaintiff was seeking damages resulting from this negligence. *Federoff*, 163 Pa. Super. at 54. In the current case, the Petitioners never alleged negligence by Franklin. Both the Petition to Set Aside Sale adjudicated by the Bankruptcy Court and the Complaint filed with the Court of Common Pleas alleged intentional and deliberate acts by Franklin. The Petitioners did not even suggest that Franklin was negligent until they submitted their response to Franklin's Motion for Summary Judgment in the Court of Common Pleas over four (4) years after their Complaint was filed. This issue was specifically addressed by

the Court of Common Pleas. Judge Mundy denied the Petitioners request to amend their Complaint to include a negligence count as it was untimely, unduly prejudicial to Franklin, and in conflict with all of the pleadings and testimony of the Petitioners in both the case at bar and the former Bankruptcy Court proceedings (Resp. App. 12a-13a). Additionally, the statute of limitations to bring a negligence action had expired by the time the Petitioners requested leave to amend their Complaint.

The Petitioners also incorrectly interpret the Pennsylvania Commonwealth Court case of *Beardell v. Western Wayne Sch. Dist.*, 91 Pa. Commw. 348, 496 A.2d 1373 (1985). The *Beardell* case involved a Motion for Judgment on the Pleadings whereby the appellate court stated that the trial court abused its discretion by denying the plaintiff's request to amend its complaint. *Beardell*, 496 A.2d at 1375-76. The amendment sought in the *Beardell* case was merely factual regarding the classification of a certain piece of property as either real or personal property. The proposed amendment was not related to the underlying cause of action and was not prejudicial to the defendant. In the instant case, the Petitioners were not merely proposing a clarification of a fact, but instead were seeking to insert an entire new cause of action against Franklin after more than four (4) years of litigation and after the statute of limitations had expired as to the new theory. The Court of Common Pleas correctly denied the Petitioners' request to amend the Complaint.

Moreover, the Court of Common Pleas' denial of the Petitioners' request to amend their Complaint fails to raise any federal question. The issues are solely state law questions which do not fall within the jurisdiction of the Supreme Court.

**B. Petitioners Do Not Present An Important And Substantial Question Of Federal Law.**

The final question presented for review by the Petitioners raises a federal question, but not a substantial one; indeed there is well-established Supreme Court precedent which makes clear that Petitioners' argument is wholly without merit. Petitioners' final issue presented for review states:

> 8. The denial of Appeal by The Supreme Court of Pennsylvania, Middle District, is contradictory to Amendment XIV of the United States Constitution, which provides:
>
> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside or their property is located. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The denial of the Petitioners' Petition for Allowance of Appeal by the Pennsylvania Supreme Court is not in violation of the Fourteenth Amendment to the United States Constitution. As with this court, the allowance of an appeal to the Pennsylvania Supreme Court is discretionary, 42 Pa. C.S.A. § 724(a) and 5105(b); and Pa. R. App. P. 1114. In deciding whether to hear an appeal, the Pennsylvania Supreme Court considers such factors as whether the lower court decision conflicts with other lower appellate court decisions, conflicts with previous decisions

of the Pennsylvania Supreme Court or the United States Supreme Court, presents a question of first impression, involves issues of immediate public importance, or raises issues which require the exercise of the Pennsylvania Supreme Court's supervisory authority over the Pennsylvania lower courts. Pa. R. App. P. 1114 (note).

The due process clause of the fourteenth amendment does not require a state to provide appellate review. *Lindsey v. Normet*, 405 U.S. 56, 77 (1972); *District of Columbia v. Clawans*, 300 U.S. 617, 627 (1937); *Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 524 (1931); *Ohio ex rel. Bryant v. Akron Metro. Park Dist. for Summit County*, 281 U.S. 74, 80 (1930); *Luckenbach S.S. Co. v. United States*, 272 U.S. 533, 536 (1926). The appeals process is a privilege created by statute in which the litigant must adhere to the applicable rules in order to utilize that privilege. *Chanosky v. City Bldg. Supply Co.*, 152 Conn. 449, 208 A.2d 337, 339 (1965). A state may establish its own rules of appellate procedure and there is no violation of the United States Constitution by a state's insistence that all parties abide by such rules. *Meyer v. Hawaii*, 164 F.2d 845, 850 (9th Cir. 1947), *cert. denied*, 333 U.S. 860 (1948).

In the current case the Petitioners have taken full advantage of this "privilege" of appeal. After the Court of Common Pleas rendered its decision, the Superior Court reviewed the trial court's decision and rendered a decision affirming the Common Pleas Court's decision. The Petitioners were correctly denied leave to appeal by the Pennsylvania Supreme Court. The Petitioners' appeal obviously does not meet the criteria for the granting of a discretionary appeal set forth in the annotation to Pa. R. App. P. 1114.

The Pennsylvania Supreme Court's refusal to exercise its

discretionary appellate jurisdiction did not violate the due process clause of the Fourteenth Amendment to the United States Constitution. Petitioners' assertion that the Pennsylvania Supreme Court's refusal to grant review of their case violates the Fourteenth Amendment is contrary to well-settled constitutional law and fails to present a substantial question for this Court's review.

## CONCLUSION

For all the reasons stated above, the Williams' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

DONALD H. BROBST
*Counsel of Record*
THOMAS B. CARPENTER
ROSENN, JENKINS
& GREENWALD, L.L.P.
*Attorneys for Respondent*
*Franklin First Federal Savings Bank,*
*n/k/a Franklin First Savings Bank*
15 South Franklin Street
Wilkes-Barre, Pennsylvania 18711
(717) 826-5600

## APPENDIX A — OPINION AND ORDER OF THE COURT OF COMMON PLEAS OF LUZERNE COUNTY, COMMONWEALTH OF PENNSYLVANIA ENTERED MAY 5, 1995

In the Court of Common Pleas of
Luzerne County

CIVIL ACTION - LAW

No. 3342-C of 1990

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Plaintiffs

vs.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY,

Defendants

### OPINION

This matter comes before the court on identical Motions for Summary Judgment filed by Defendant, Franklin First Federal Savings Bank ("Franklin First"), and Defendant, Sheriff of Luzerne County ("Sheriff's Office") on January 23, 1995. Plaintiffs, Geraldine Williams and Woodrow Williams, Jr. ("Plaintiffs") filed their Brief Contra Defendants' Motions for Summary Judgment on February 28, 1995. Oral argument on Defendants' Motions for Summary Judgment was conducted on April 24, 1995, and this opinion follows.

A review of the procedural history of the above captioned

matter demonstrates that the pleadings are closed, and, therefore, that Defendants' Motions for Summary Judgment are timely filed and pursued under Pa.R.C.P. 1035(a). 6 Standard Pennsylvania Practice 2d, §32:12.

***Standards Governing Motions for Summary Judgment***

Under Pa.R.C.P. 1035(b), a motion for summary judgment can be granted only where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Carringer v. Taylor*, 402 Pa.Super. 197, 586 A.2d 928 (1990); *Consumer Party of Pennsylvania v. Commonwealth of Pennsylvania*, 510 Pa. 158, 507 A.2d 323 (1986), *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979), *Linwood Harvestore, Inc. v. Cannon*, 427 Pa. 434, 235 A.2d 377 (1967), *Vosburg v. Connolly*, 80 Luzerne L.R. 56 (1990), and *Densberger v. Keystone Welfare Fund*, 81 Luzerne L.R. 207 (1991).

Summary judgment can be granted only in the clearest of cases, *Mallesky v. Stevens*, 427 Pa. 352, 235 A.2d 154 (1967), in which there is not the slightest doubt as to the absence of a triable issue of fact, *Prince v. Pavoni*, 225 Pa.Super. 286, 302 A.2d 452 (1973), *Marks v. Tasman*, 527 Pa. 132, 589 A.2d 205 (1991), *Sipple v. Ideal Industries, Inc.*, 82 Luzerne L.R. 80 (1992), and *Ralston et al. v. Larock et al.*, 83 Luzerne L.R. 28 (1992).

In considering a motion for summary judgment, the court must examine the record in the light most favorable to the nonmoving party, determine whether any genuine issues of material fact exist, and resolve all doubts in favor of the nonmoving party, *Marks v. Tasman, supra, Helf v. Neft*, 352

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Pa.Super. 195, 507 A.2d 839 (1986), *Gresko v. Freifeld*, 81 Luzerne L.R. 14 (1990), *Minnig v. Hazleton St. Joseph Medical Center*, 81 Luzerne L.R. 107 (1991), *Rocky Glen Park, Inc. v. G. T. Enterprises, Inc. & Gabriel Warshawsky*, 81 Luzerne L.R. 82 (1991), *Ryder Truck Rental, Inc. v. Maryland Casualty Company*, 81 Luzerne L.R. 126 (1991), and *Erie Insurance Exchange v. Bronsburg and Hughes, Inc., et al.*, 82 Luzerne L.R. 45 (1992).

The moving party bears the burden of establishing that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Burko v. Commonwealth of Pennsylvania, et al.*, 81 Luzerne L.R. 112 (1991), and *Garcia v. Savage*, 402 Pa. Super. 314, 596 A.2d 1375 (1991).

In order to demonstrate entitlement to summary judgment, the moving party must meet a demanding burden of proof, described in *Laventhol & Horwath v. Dependable Insurance Associates, Inc.*, 396 Pa.Super. 553, 558, 579 A.2d 388, 390 (1990), alloc. den. 593 A.2d 413, 593 A.2d 419, 593 A.2d 420, as follows:

> Summary judgment may properly be entered only if the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Pa.R.Civ.P. 1035(b). The moving party has the burden of persuading the court that no genuine issues exist as to the material facts. Summary

> judgment may be entered only where the case is free from doubt. [citations omitted] In passing upon a motion for summary judgment, moreover, the court must examine the record in the light most favorable to the non-moving party. Any doubt must be resolved against the moving party.

See also: *Thompson Coal Co. v. Pike Coal Co., supra; Ducjai v. Dennis*, 342 Pa.Super. 366, 636 A.2d 1130 (1994); *Noll v. Clear Brook Lodge, Inc.*, 82 Luzerne L.R. 138 (1992); and 6 Standard Pennsylvania Practice 2d, Section 32:43.

***Procedural Background***

The record before us demonstrates that the present matter is a culmination of protracted and intermingled litigation related to (1) bankruptcy proceedings pursued by Plaintiffs; and (2) mortgage foreclosure proceedings initiated by Franklin First with respect to real property owned by Plaintiffs and located in Bear Creek Township, Luzerne County, Pennsylvania ("the mortgaged property"). The history of this litigation can be summarized as follows:

Plaintiffs, owners of the mortgaged property, in consideration of a $25,000 loan made by Franklin First to Plaintiffs, executed and delivered to Franklin First a promissory note in the amount of $25,000 and a mortgage which created a first lien on the mortgaged property and which was recorded on August 19, 1977, in Luzerne County Mortgage Book 1192 at page 13.

Alleging Plaintiffs stopped making payments on the

mortgage in or after April 1986, and were in default on the mortgage, Franklin First initiated mortgage foreclosure proceedings on August 8, 1986 ("the mortgage foreclosure proceedings"), which action was filed to No. 3807-C of 1986 in the Court of Common Pleas of Luzerne County. Judgment was entered against Plaintiffs, a Writ of Execution was issued, and a Sheriff's sale of the premises was scheduled for February 6, 1987.

On January 12, 1987, Plaintiff, Woodrow Williams, Jr., filed a voluntary Chapter 13 proceeding in the United States Bankruptcy Court for the District of Maryland (Rockville) to Case Number 87-4-0093.

On February 3, 1987, Plaintiff, Woodrow Williams, Jr., filed a "Suggestion of Bankruptcy" in the Luzerne County Prothonotary's Office in the mortgage foreclosure of proceedings, notifying the court of the automatic stay of civil proceedings provided by the bankruptcy proceedings.

On February 6, 1986, the Sheriff's sale was conducted, and the mortgaged property was conveyed to Franklin First by Sheriff's deed dated and filed on February 17, 1987.

On April 20, 1987, Plaintiff, Geraldine Williams, filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the District of Maryland (Rockville) to Case No. 87-4-0966.

On May 13, 1987, Plaintiffs filed a petition in the mortgager foreclosure proceedings to set aside the sheriff's sale and to strike the sheriff's deed.

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On June 2, 1987, Brominski, J. enter an Order in the mortgage foreclosure proceedings continuing the mortgage foreclosure action and enjoining Plaintiffs from selling or disposing of the mortgaged property, pending the disposition of Plaintiff's Petition for Removal of the action by the United States District Court.

The United States Bankruptcy Court for the Middle District of Pennsylvania, via the Order of Gibbons, J. dated November 9, 1987, removed Plaintiff's petition to set aside the sheriff's sale and to strike the sheriff's deed from the Court of Common Pleas of Luzerne County, and transferred the litigation to the Middle District of Pennsylvania, the case being assigned the docket number of Term No. 5-87-0126.

Franklin First filed a motion with the United States District Court for the Middle District of Pennsylvania requesting a determination of the validity of a post-bankruptcy petition transfer of debtor's interest in real property and for denial of debtor's motion to set aside a foreclosure sale.

The United States Bankruptcy Court for the Middle District of Pennsylvania, via the Order of Gibbons, J. dated June 13, 1989, entered judgment in favor of Plaintiffs and against Franklin First, declared the sheriff's sale of the mortgaged property invalid, and ordered Franklin First to reconvey the mortgaged property to Plaintiffs. In an accompanying opinion, Gibbons, J. held: (1) that the foreclosure sale of the mortgaged property, taking place after the bankruptcy petition was filed, was an invalid transfer under the Bankruptcy code; (2) that filing the suggestion of bankruptcy in the Luzerne County Prothonotary's Office, rather than the Luzerne County Recorder of Deeds Office, did not give Franklin sufficient notice of the bankruptcy

filing; (3) that Plaintiffs made a confused factual presentation concerning their attempts to notify Franklin of the bankruptcy proceedings; and (4) that Plaintiffs failed to meet their burden of proving Franklin First took intentional or deliberate actions amounting to a "willful" violation of else stay created by the bankruptcy proceedings. Consequently, United States Bankruptcy Court for the Middle District of Pennsylvania, denied Plaintiffs' request for damages against Franklin First and the Sheriff's Office.

Dissatisfied with the decision of Gibbons, J., Plaintiffs on June 21, 1989, filed an extension of time to file an appeal.

On July 11, 1989, Franklin First reconveyed the mortgaged property to Plaintiff, Geraldine Williams, the deed being recorded in the Luzerne County Recorder of Deeds office in Deed Book 2316 at page 978.

On July 13, 1989, Plaintiffs' request for an extension of time to file an appeal was granted by United States Bankruptcy Court for the Middle District of Pennsylvania. In a supporting memorandum, the court questioned Plaintiffs' "misrepresentations" concerning their representation by counsel in the bankruptcy proceedings and the mortgage foreclosure action. While Plaintiffs' were granted the above described extension of time to appeal from the Order of Gibbons, J. Plaintiffs took no further action on the appeal.

On September 6, 1989, United States Bankruptcy Court for the Middle District of Pennsylvania, via the Order of Kosik, J. dismissed Plaintiffs' appeal from the final Order of Gibbons J. dated June 13, 1989. In an accompanying Memorandum, Kosik, J. (1) observed that Plaintiffs' appeal was "only from that part

of the bankruptcy judge's opinion which denied debtors request for damages against [Franklin First] and [the Sheriff's Office] because of their failure to show an intentional and willful violation of stay," and (2) questioned the candor of Plaintiffs with respect to their being represented by counsel and their dilatory conduct in filing the record on appeal, the statement of issues, and brief. Citing Plaintiffs' "apparent misrepresentations and disregard for the procedures," the court dismissed Plaintiffs' appeal from the Order of Gibbons, J.

On November 27, 1989, Kosik, J. granted Plaintiffs' pro se motion for reconsideration, reviewed his earlier Memorandum, and concluded the dismissal of Plaintiffs' appeal was valid. No further appeal was taken by Plaintiffs in the bankruptcy proceedings.

On June 13, 1990, Plaintiffs filed the instant action, in which they seek compensation from Defendants in the form of compensatory and punitive damages, because Defendants (1) "willfully and deliberately and illegally" foreclosed on the mortgaged property despite the notice of bankruptcy proceedings, (2) denied Plaintiffs' access to the mortgaged property, failed to pay the property taxes, and allowed the mortgaged property to deteriorate, during the period February 6, 1987 to October 1989, and (3) failed to reconvey the property to Plaintiffs until October 1989, despite the Order of Gibbons, J. dated June 13, 1989.

***Resolution of Motion for Summary Judgment***

Defendants argue they are entitled to summary judgment because Plaintiffs' claim is barred by the doctrines of collateral estoppel or *res judicata.* We must agree.

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The doctrine of collateral estoppel (or issue preclusion) prohibits the relitigation of the same issues previously decided. The criteria governing the application of collateral estoppel are described in *Matternas v. Stehman*, __ Pa.Super. __, 642 A.2d 1120, 1125 (1994), as follows:

> Collateral estoppel applies if (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privily with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is assumed had a full and fair opportunity to litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment. (cit. omitted).

As the above recited procedural history demonstrates, the criteria for the application of collateral estoppel have been fulfilled. To begin with, the issue decided in the bankruptcy proceedings was that Plaintiffs failed to meet their burden of proving Franklin First took intentional or deliberate actions amounting to a "willful" violation of the stay created by the bankruptcy proceedings. In the present action, the issue which ultimately must be decided by the court is whether Plaintiffs have established Defendants "willfully and deliberately and illegally" foreclosed on the mortgaged property, despite the existence of the stay provided by the bankruptcy proceedings. Hence the issue decided in the bankruptcy proceeding is identical to the issue presented in the present action.

Second, because Plaintiffs' have not appealed from the order of, Kosik, J. dated November 27, 1989, there has been final judgment on the merits of the issue of whether Plaintiffs met their burden of proving Defendants willfully violated the stay created by bankruptcy proceedings.

Third, Plaintiffs were parties to the bankruptcy proceedings in which the issue of Defendant's willful violation of the stay created by bankruptcy proceedings was resolved.

Finally, Plaintiffs had a full and fair opportunity to litigate the issue of Defendant's willful violation of the stay in the bankruptcy proceedings.

Hence we must conclude: (1) that the elements of collateral estoppel have been fulfilled: (2) that, while Plaintiffs had the opportunity in the bankruptcy proceedings, they failed to establish willful and deliberate action on the part of Defendants in pursuing the mortgage foreclosure contrary to the stay provided by the bankruptcy proceedings, and (3) Plaintiffs should not be given a second opportunity to pursue the same issue in the present action.

The doctrine of *res judicata* (or claim preclusion) precludes the litigation of claims that have previously been litigated. As noted in *Matternas v. Stehman*, __ Pa.Super. __, 642 A.2d 1120, 1123 (1994):

> Where there has previously been rendered a final judgment on the merits by a court of competent jurisdiction, the doctrine of *res judicata* will bar any future suit on the same cause of action between the same parties. *See*

*Appendix A*

> *10 Standard Pennsylvania Practice 2d* §65:32. Invocation of the doctrine of *res judicata* (claim preclusion) requires that both the former and latter suits possess the following common elements: 1. identity of the thing sued upon: 2. identity in the cause of action; 3. identity of persons and parties to the action; and 4. identity of the capacity of the parties suing or being sued. (cit. omitted).

We must conclude the claim in the prior action is identical to the claim presented in the present action. To begin with, the matter being sued upon — the actions of Defendants in proceeding with the mortgage foreclosure action despite the filing of the notice of bankruptcy proceedings — is the same in both bankruptcy proceedings and the instant proceedings.

Second, in the bankruptcy proceedings, Plaintiffs unsuccessfully pursued the claim that Franklin First took intentional or deliberate actions amounting to a "willful" violation of the stay created by the bankruptcy proceedings. In the instant action, Plaintiffs claim that Defendants "willfully and deliberately and illegally" foreclosed on the mortgaged property despite the notice of bankruptcy proceedings. Hence the causes of action in both actions are identical, a matter directly confirmed by the deposition testimony of Plaintiffs.

More particularly, Plaintiff, Geraldine Williams, testified that she sought damages for Defendants' fraudulent actions in depriving her of her property despite the existence of the automatic stay provided by bankruptcy proceedings (D.T. 28); and that Franklin First "conducted their own fraudulent activity"

in undertaking an "illegal-foreclosure" of the mortgaged property in that Franklin First has notice of the bankruptcy but proceeded with the foreclosure (D.T. 41-42). Plaintiff, Woodrow Williams, testified that the illegal foreclosure deprived Plaintiffs of the use of the mortgaged property for over two years (D.T. 5-6); and that the foreclosure was illegal, because he had filed notice of the bankruptcy proceedings (D.T. 43, 59).

Third, the parties in both the bankruptcy proceedings — as confirmed by the above summarized opinions and memoranda issued by the Federal District Court for the Middle District of Pennsylvania — and the instant matter are identical.

Finally, the capacity of the parties in both the bankruptcy proceedings and the instant matter are identical.

Consequently, we must conclude that Plaintiffs' cause of action in the instant matter is also precluded by the doctrine of *res judicata.*

In this regard, Plaintiffs argue that Defendants' action in proceeding with the foreclosure action despite the stay provided by the bankruptcy proceedings might have resulted from "unintentional tortious conduct." Hence, Plaintiffs contend, they should be allowed "to amend their Complaint to add allegations of negligence or unintentional tortious violation of the provision of the automatic stay."

We cannot agree. To begin with, there is not the slightest hint of "unintentional" or "negligent" conduct on the part of Defendants in Plaintiffs' Complaint. Nor has there been there any such indication throughout the parties protracted litigation. Indeed, if Plaintiffs were now allowed to amend their Complaint

to include such allegations, they would effectively be allowed to directly contradict both their allegations to date and their deposition testimony. Moreover, discovery in the instant matter having been completed and the matter having already been listed for trial and then removed from the trial list to enable the instant Motion for Summary judgment to be decided, we must conclude that allowing such an eleventh hour amendment would clearly prejudice Defendants. *Marcinko v. Strouse et al.*, 94 Luzerne L.R. 63 (1994) and *Phillips et al., v. Geisinger Wyoming Valley Center et al.*, 85 Luzerne L.R. 83 (1995)

Accordingly, we enter the following

*Appendix A*

In the Court of Common Pleas of
Luzerne County

CIVIL ACTION - LAW

No. 3342-C of 1990

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Plaintiffs

vs.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY,

Defendants

**ORDER**

Now, this 5th day of May, 1995, at 10 o'clock' A.M., it is hereby ORDERED, ADJUDGED AND DECREED:

(1) The Motion for Summary Judgment filed by Defendant, Franklin First Federal Savings Bank, on January 23, 1995, is hereby GRANTED.

(2) Judgment is hereby entered in favor of Defendant, Franklin First Federal Savings Bank, and against Plaintiffs, Plaintiffs, Geraldine Williams and Woodrow Williams, Jr., with respect to the claims contained in their Complaint filed on June 13, 1990.

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(3) The Motion for Summary Judgment filed by Defendant, Sheriff of Luzerne County, on January 25, 1995, is hereby GRANTED.

(4) Judgment is hereby entered in favor of Defendant, Sheriff of Luzerne County, and against Plaintiffs, Plaintiffs, Geraldine Williams and Woodrow Williams, Jr., with respect to the claims contained in their Complaint filed on June 13, 1990.

(5) The Prothonotary is directed to mail notice of entry of this Order to all counsel of record pursuant to Pa.R.C.P. 236.

By the Court:

s/ H. Mundy, J.

For Plaintiffs:
Steven E. Krawitz, Esquire
Krawitz & Krawitz, P.C.
553 Main Street
Stroudsburg, PA 18360

For Defendant, Franklin First Federal Savings Bank:
Michael A. Shucosky, Esquire
Rosenn, Jenkins & Greenwald
15 South Franklin Street
Wilkes-Barre, PA 18711

For Defendant, Sheriff of Luzerne County:
James P. Blaum, Esquire
11 West Union Street
Wilkes-Barre, PA 18702

## APPENDIX B — MEMORANDUM AND JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA ENTERED APRIL 1, 1996

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1955 Philadelphia 1995

GERALDINE WILLIAMS AND WOODROW WILLIAMS, JR.,

Appellants

v.

FRANKLIN FIRST FEDERAL SAVINGS BANK AND SHERIFF OF LUZERNE COUNTY

Appeal from the Order Entered May 5, 1995,
in the Court of Common Pleas of Luzerne County,
Civil Division, No. 3342-C OF 1990

BEFORE: HUDOCK, FORD ELLIOTT, AND CERCONE, JJ.

MEMORANDUM:

Appellants come before us challenging an order entering summary judgment in favor of both appellees. Appellants had brought suit against appellee bank and appellee sheriff's department for damages arising from what was characterized as willful and deliberate foreclosure[1] on mortgaged property in

1. It was the sheriff's sale and not the foreclosure proceeding, *per se*, that was at issue. Judgment in the foreclosure proceeding was entered October 24, 1986. Appellant's bankruptcy petition was not filed until January 12, 1987. The sheriff's sale occurred February 6, 1987, three days after appellants had filed a Suggestion of Bankruptcy with the Luzerne County prothonotary.

violation of the automatic stay of the Bankruptcy Code, 11 U.S.C.A. § 362. Previously, appellants had litigated the same matter before the United States Bankruptcy Court for the Middle District of Pennsylvania. The Bankruptcy Court agreed to set aside the sheriff's sale, but disallowed any damages on the basis that appellees' actions were not willful and deliberate. The trial court entered summary judgment on the bases of collateral estoppel and *res judicata.* We affirm.

Based upon our independent review of the briefs, the record, and applicable case and statutory law, we conclude that the opinion of the trial court, filed May 8, 1995, accurately states the facts and posture of the case and appropriately resolves appellants' claims on appeal. We affirm on that basis.

Accordingly, the order entered May 5, 1995, granting summary judgment for appellees is hereby affirmed. Jurisdiction relinquished.

*Appendix B*

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1955 Philadelphia 1995

GERALDINE WILLIAMS AND WOODROW WILLIAMS, JR.,

Appellants

v.

FRANKLIN FIRST FEDERAL SAVINGS BANK AND SHERIFF OF LUZERNE COUNTY

Appeal from the Order Entered May 5, 1995,
in the Court of Common Pleas of Luzerne County,
Civil Division, No. 3342-C OF 1990

BEFORE: HUDOCK, FORD ELLIOTT, AND CERCONE, JJ.

*JUDGMENT*

***ON CONSIDERATION WHEREOF**, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* LUZERNE *County be, and the same is hereby* AFFIRMED. JURISDICTION RELINQUISHED.

*BY THE COURT:*

s/ illegible
PROTHONOTARY

*Dated:* APRIL 1, 1996

## APPENDIX C — ORDER OF THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT DENYING PETITION FOR ALLOWANCE OF APPEAL ENTERED JANUARY 17, 1997

**IN THE SUPREME COURT OF PENNSYLVANIA**
**MIDDLE DISTRICT**

No. 416 M.D. Alloc. Dkt. 1996

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Petitioners

v.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY,

Respondents

Petition for Allowance of Appeal from Order of the Superior Court

**ORDER**

**PER CURIAM**

AND NOW, this 17th day of January, 1997, the Petition for Permission to Respond to Opposition is denied. The Petition for Allowance of Appeal is denied.

TRUE & CORRECT COPY

ATTEST: JAN 21 1997

s/ Joan L. Stehulak
JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY